IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1092 OF 2005

WITH

CIVIL APPLICATION NO.1336 OF 2005

Chandrakant Pundalik Sawant & Ors...Appellants.

Vs.

Pariwar Safalya Co-op. Hsg.
Society Ltd. & Ors. ..Respondents.

....

Mr.A.R.Shaikh for the Appellants.

Mr.Nikesh Kabar for Respondent No.1.

Mr.J.Reis for Respondent No.2.

Ms.Geetanjali Joglekar for Respondent No.3.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

5th December, 2005.

P.C. :

1. A Slum Rehabilitation Scheme is being implemented under Development Control Regulation

33(7). A letter of intent was issued in favour of the First Respondent and the Scheme has been implemented by the Second Respondent who is the developer. Two writ petitions were filed before this Court, the first being Writ Petition (Lodg.) 2662 of 2004 which was filed by a proposed co-operative society by the name of Happy Home Co-operative Housing Society. That Petition sought to question the no objection certificate which was granted to the First Respondent. The Petition was dismissed on 7th October, 2004 by the Division Bench. Subsequently, a second Writ Petition (Writ Petition (Lodg.) 2117 of 2005) was filed by some of the residents of the property who had not consented to be a part of the Slum Rehabilitation Scheme. The second Petition was dismissed by a Division Bench on 28th September, 2005 noting that the prayers in the Petition were similar to those which were urged before this Court in the earlier proceedings. Thereafter, the City Civil Court was moved in a suit instituted by 20 residents. An injunction has been sought restraining the Corporation from demolishing the premises in the use and occupation of the Plaintiffs. A mandatory injunction has also been sought directing the

society and the developer to execute individual agreements in favour of the Plaintiffs.

2. It is common ground between the learned counsel that the names of all the Plaintiffs have been certified in the list of eligible occupants in the form of Annexure II. A copy of Annexure II as certified by the Municipal authorities is annexed to the paperbook. Counsel appearing for the First and Second Respondents have stated before the Court that if the Appellants agree to become members of the First Respondent and indicate their consent to the Slum Rehabilitation Scheme, there should be no difficulty in accommodating the Appellants subject to the Corporation having no objection thereto. It would appear that initially the Appellants had not consented to participate in the Scheme. At present the Court has been informed that over 155 occupants have already moved to transit accommodation. Since the implementation of the Scheme has begun and two prior petitions were dismissed, there is absolutely no question of this Court now injuncting the implementation of the Scheme. Though that appears to have been the tenor of the submissions initially addressed on behalf of the Appellants, at the

hearing of the Appeal, the Appellants have confined their prayer only to the request that they should be allowed to become members of the First Respondent and to participate in the Scheme. Since the Corporation has already submitted a list of members eligible to participate in the Scheme, there is no reason why the Appellants should also not be allowed to participate in the Scheme. Counsel appearing for the First and Second Respondents submitted that individual agreements will be entered into with the Appellants. Counsel appearing for the Appellants states that the Appellants shall apply to the First Respondent and to the Municipal Corporation, the Third Respondent within a period of one week from today indicating unconditionally that the Appellants have consented to the Slum Rehabilitation Scheme. Conditional on the Appellants indicating their consent in the aforesaid terms, the Third Respondent shall issue a formal certification within a period of two weeks thereafter. As noted above, Annexure II certifying the eligibility of the Appellants has already been issued. The First and Second Respondents have agreed to permit the participation of the Appellants subject to the aforesaid conditions. It

is however clarified that the present order shall not be construed in any manner as an order of restraint on the implementation of the Scheme which shall continue in view of the fact that the earlier petitions have been dismissed by this Court. Since the aforesaid directions are issued on the basis of a consensual arrangement which has been arrived at between the parties through their learned counsel who are present before the Court, no further reliefs are pressed. The Appeal is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.